Supreme Court, U.S.
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IN THE
SUPREME COURT OF THE UNITED STATES

LEO STOLLER,
v.
UNITED STATES COURT OF APPEALS FOR
THE SEVENTH CIRCUIT

ON PETITION FOR A WRIT OF CERTIORARI TO
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

SUPPLEMENTAL APPENDIX

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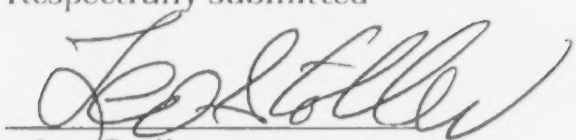
Respectfully submitted



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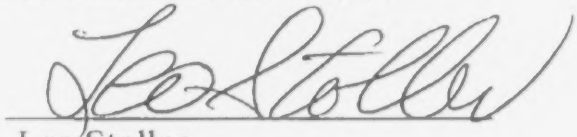
CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type of volume limitation pursuant to Rule 33 of the Rules of the Supreme Court. The brief contains 14 pages and the type face is CentSchbook BT, 12-point font.



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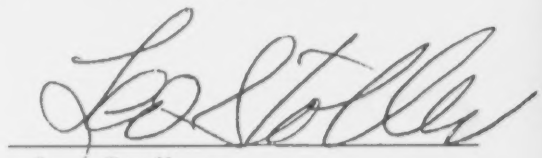
STATEMENT

Petitioner certifies that all materials are listed in the appendix and contained in this supplemental appendix.



Leo Stoller

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Appeal No. 09-3561

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Case NO. 07 C 385

Google, Inc.,

Plaintiff,

v.

Central Mfg. Inc. a/k/a Central Mfg. Co. a/k/a Central Mfg. Co (Inc.) a/k/a Central Manufacturing Company Inc. a/k/a Central Mfg. Co. of Illinois; and Stealth Industries, Inc. a/k/a Rentamark and a/k/a Rentamark.com,

APPENDIX A-7

MEMORANDUM OPINION AND ORDER

Plaintiff Google Inc. ("Google") has filed this civil RICO action against Defendants Central Mfg. Inc. ("Central") a/k/a Central Mfg. Co. a/k/a Central Mfg. Co.(Inc.) a/k/a Central Manufacturing Company Inc. a/k/a Central Mfg. Co. of Illinois and Stealth Industries, Inc. ("Rentamark") a/k/a Rentamark a/k/a Rentamark.com (collectively, "Defendants") alleging, among other things, that Defendants and their purported principal, Leo Stoller ("Stoller"), are engaged in a scheme of falsely claiming trademark rights for the purpose of attempting to extort money out of legitimate commercial actors. More specifically, Google alleges that Defendants aimed their continuing scheme in its direction by first seeking to oppose Google's application for registration of the "Google" trademark based upon a fraudulent claim of common law rights in or to that mark and then sending settlement communications to Google that offered to resolve the "registerability controversy" if Google would, among other things, agree to: (1) abandon its trademark application (2) pay a 5% royalty for use of the "Google" mark; and (3) pay $100,000.00 to Rentamark.com and acknowledge Rentamark.com's exclusive ownership of the "Google" mark.

On December 20, 2005, Stoller filed a voluntary petition for relief under Chapter 13 of the United States Bankruptcy Code (the "Code"). On motion of one of Stoller's creditors, Stoller's bankruptcy case, styled *In re Stoller*, No. 05-64075 in the United States Bankruptcy Court for the Northern District of Illinois (the "Bankruptcy Court"), was converted to a case under Chapter 7 of the Code on September 1, 2006. The property of Stoller's estate in bankruptcy includes, among other things, the stock and interests of incorporated and unincorporated businesses, including Stoller's wholly-owned interest in the Defendants. On September 6, 2006, the United States Trustee for Region 11 appointed Richard M. Fogel ("Trustee") as trustee to administer Stoller's estate in bankruptcy.

Stoller filed a Motion to Intervene in this action on February 6, 2007 arguing that: (1) he was the sole shareholder of Defendants; (2) he was the party that filed a petition for cancellation of the Google trademark registration; (3) he was the party that communicated with Google' s counsel regarding the registerability controversy; (4) he was the party that claimed rights in and to the Google trademark; and (5) absent his involvement in this case, the corporate defendants would not be adequately represented. This Court denied Stoller's Motion,

finding that he could not intervene as of right because he had no direct, significant legall interest in the litigation; first, because Stoller's companies had become part of his bankruptcy estate and therefore he held no interest in them, and second, because all his other assertions of right were contradicted by the record. In addition, this Court refused Stoller permissive intervention, noting Stoller's renown as a vexatious litigant and that his intervention would frustrate the parties' efforts to settle the matter. Thereafter, this Court approved a settlement agreed to by Google and entered a permanent injunction and final judgment. Stoller appealed both the denial of his Motion to Intervene and the final judgment.

The Seventh Circuit vacated the final judgment and remanded Stoller's Motion to Intervene for reconsideration, noting that Stoller's corporations seemed to be mere alter egos of Stoller. Additionally, it directed this Court to consider: 1) whether Central Manufacturing Inc. and Stealth Industries, Inc. are subject to suit, considering that the Bankruptcy Court found that the bankruptcy court "all but declared" that CFI and Stealth were alter egos of Stoller;" and 2) whether the bankruptcy estate and trustee were properly involved in the case. That is, Google had taken the position in the bankruptcy court that this case arose after the bankruptcy estate was created, and if that was the case, it should go to

the debtor, rather than to his bankruptcy estate.

After remand, Stoller filed a supplement to his Motion to Intervene, noting the Seventh Circuit's opinion and taking the position that he should be allowed to intervene because his corporations were his alter egos but still were in no way "sham corporations." For the reasons stated below, this Court again denies Stoller's Motion to Intervene.

STANDARD OF REVIEW

Under Rule 24 intervention may be as of right or it may be permissive. *See Heartwood v. U.S. Forest Serv., Inc.*, 316 F.3d 694, 7000 (7th Cir. 2003). A party seeking to intervene as of right must satisfy four requirements: (1) the motion to intervene must be timely; (2) the party seeking to intervene must claim an interest related to the property or transaction which is the subject of the action; (3) the party seeking to intervene must be so situated that the disposition of the action may as a practical matter impair or impede the party's ability to protect that interest; and (4) the existing parties must not be adequate representatives of the applicant's interest. *See* Fed. R. Civ. P. 24(a);

see also Skokaogon Chippewa Cmty v. Babbitt, 214 F.3d 941, 945-46 (7th Cir. 2000). Failure to satisfy any one of the four requirements for intervention as of right is sufficient grounds to deny a motion to intervene. See United States v. BDO Seidman, 337 F.3d 802, 808 (7th Cir. 2003). Determinations on motions to intervene are highly fact-specific. See Reich v. ABC/York-Estes Corp., 64 F.3d 316, 321 (7th Cir. 1995) citing Shea v. Angulo, 19 F.3d 343, 349 (7th Cir. 1994). This Court must accept as true all non-conclusory allegations in the motion to intervene. See Id. citing Lake Investors Dev. Group v. Eglidi Dev. Group, 715 F.2d 1256, 1258 (7th Cir. 1983). A motion to intervene as of right should not be dismissed unless "it appears to an absolute certainty that the intervener is not entitled to relief under any set of facts which could be proved under the complaint." Id.

A party seeking to intervene in a case must assert an interest in the action that is a "direct, significant legally protectible" one. *Reich*, 64 F.3d at 322 *quoting Am. Nat '1 Bank v. City of Chicago*, 865 F.2d 144, 146 (7th Cir. 1989). In the Seventh Circuit, this inquiry focuses "on the issues to be resolved by the litigation and whether the potential intervener has an interest in those issues." *Id. citing Am. Nat'l*

Bank, 865 F.2d at 147.

STOLLER'S ALLEGATIONS

Stoller alleges in his Motion to Intervene that he is the sole shareholder and sole employee of the Defendants. *See* Mtn. Intervene at 1, 3. In addition, he alleges that it was he personally on behalf of the Defendants who claimed rights to Google's trademark and brought the petition to cancel it. *See Id.* He further alleged that Google had previously petitioned the bankruptcy court to lift the automatic stay of litigation so that it could sue Stoller and that Google itself found that Stoller was an indispensable party to the proposed litigation. *See Id.* at 2. In support of this allegation, he attached an order from the Bankruptcy Court granting Google's motion for order declaring its proposed suit to be outside the scope of stay or in the alternative, modifying the stay. *See Id.* at 6-7.

In his Motion, Stoller directly references and relies on the factual findings of the Bankruptcy Court in its decision converting Stoller's Chapter 13 bankruptcy proceeding to a Chapter 7 proceeding. There the Bankruptcy Court made detailed factual findings regarding the relationship between Stoller and his various corporations and other entities. *See In re Stoller*, 351 B.R. 605, 611616 (N.D.I11. 2006).

Specifically, the Bankruptcy Court found that: 1) Stoller made all decisions for the entities; 2) Stoller testified that he was the "actual, controlling entity;" 3) all the entities were operated by Stoller at the same address; 4) the entities did not keep corporate books or records of finances; 5) the entities had no record of dividend payments; 6) Stoller owned all stock in the entities; 7) the entities had no officers other than Stoller; 7) Stoller referred to the entities' assets as his personal assets; and 8) Stoller commingled funds from all of the entities as well as his personal funds in a single bank account. *See Id.* at 616-17. Based on these findings, the Bankruptcy Court found that Stoller and his businesses are "indistinguishable." *See Id.* at 616.

In addition, Google's Complaint takes the position that Stoller was Defendants' principal, used the Defendants to harass other companies, and was responsible for the actions taken against Google. Google asserts that Stoller was the CEO and sole shareholder of the Defendants and that "Stoller conducted the activities complained of in interstate commerce." *See* Cmplt. at 10. Many of their statements implicate one defendant "and Stoller" or allege that a Defendant acted "through Stoller." *See, e.g.*, Cmplt. at 21 (c) ("Stoller initiated numerous

proceedings in SI' s name"); Cmplt. at 21(e) ("Stoller has obtained . . . the transfer of trademark applications . . .to Defendant Stealth and Defendant Central Mfg."); Cmplt. at 34-36 ("Central Mfg. And Stoller" opposed Google's trademark application and Stoller signed the related letters and purported settlement agreements). Google attached documents such as various letters signed by Stoller on behalf of Stealth Industries, a July 14, 2006 letter from the Trademark Office to Stoller imposing sanctions against him, and letters to Google regarding their trademark and proposed settlement agreements signed by Stoller, as well as multiple articles about Stoller and several emails sent from Stoller to Google's attorney Michael Zeller to its Complaint.

DISCUSSION

Generally, a corporation is a legal entity separate from its shareholders, directors and officers, but the corporate entity may be disregarded and the corporate veil pierced when the corporation is merely the alter ego of a "governing or dominant personality." *Semande v. Estes*, 871 N.E.2d 268, 271 (Ill.App.Ct. 2007) *citing People v. V& M Indus.*, 700 N.E.2d 746, 751 (Ill.App.Ct. 1998). Put differently, the Court can in some circumstances disregard the corporate form because it is merely a "dummy or sham" for another dominating entity. *See Cosgrove*

Dist., Inc. v. Haff, 798 N.E.2d 139, 141 (Ill.App.Ct. 2003) *citing Jacobsen v. Buffalo Rock Shooters Supply, Inc.*, 664 N.E.2d 328, 331 (Ill.App.Ct. 1996). This is essentially what Stoller asks the Court to do here. That is, he argues that his corporations have no existence separate from him and therefore he is the true party of interest in this litigation.

Dist., Inc. v. Haff, 798 N.E.2d 139, 141 (Ill.App.Ct. 2003) *citing Jacobsen v. Buffalo Rock Shooters Supply, Inc.*, 664 N.E.2d 328, 331 (Ill.App.Ct. 1996). This is essentially what Stoller asks the Court to do here. That is, he argues that his corporations have no existence separate from him and therefore he is the true party of interest in this litigation.

The Court looks to a number of factors in determining whether to disregard the corporate form, including: "failure to issue stock; failure to observe corporate formalities; nonpayment of dividends; insolvency of the debtor corporation; nonfunctioning of the other officers or directors; absence of corporate records; commingling of funds; diversion of assets from the corporation by or to a shareholder; failure to maintain arms-length relationships among related entities; and whether the corporation is a mere facade for the operation of the dominant shareholders." *Id.* Here, according to

Stoller's allegations, he owns all the stock of the corporations and is their only officer. He commingles funding between corporations and with his own money and treats the commingled funds as his personal assets. He observes no formalities – he keeps no records and makes all decisions for the corporations himself. The allegations here, which this Court must take as true, establish that Stoller's corporations are his alter egos. They are mere facades for their dominant, and for that matter only, shareholder, Stoller who uses them to carry on his personal business.

Although Stoller' s corporations appear to be shams, Stoller may not intervene as of right. In moving to intervene on the basis that his interests are affected because his alter ego corporations are involved in the suit, Stoller asks this Court to "pierce the corporate veils" to his benefit. This doctrine applies only where an individual uses the corporation as an instrumentality to perpetrate fraud or injustice on a third party. *See In re Rehab. of Centaur Ins. Co.*, 632 N.E.2d 1015, 1018 (Ill. 1994). Piercing the corporate veil is utilized only to protect third parties who have relied on the existence of the separate corporate entity, not for the benefit of the corporation itself or its shareholders. *See Semande*, 871 N.E.2d at 271 *citing Centaur*, 632 N.E.2d at 173;

see also Trossman v. Philipsborn, 869 N.E.2d 1147, 1174 (Ill.App.Ct. 2007) (*Centaur* not limited to its specific facts but rather rejects the piercing of the corporate veil to benefit shareholders). This is because an individual should not be allowed to adopt the corporate form for his own protection and then disregard it when it is to his advantage to do so. *See Id.* at 271-72 *citing Scheuley Distillers Corp. v. United States*, 326 U.S. 432, 437 (1946) (corporate form will not be disregarded where those in control have deliberately adopted it to secure its advantages); *see also Main Bank of Chicago v. Baker*, 427 N.E.2d 94, 102 (Ill. 1981) (same).

Here, Stoller asks this Court to allow him to intervene because his corporations, which have been sued, are his alter egos, indistinguishable from him, and he therefore has a direct interest in the suit. According to Google, Stoller used his corporations as a means by which to harass trademark holders and applicants. Stoller now wishes to intervene in this action against his corporations and therefore asks this Court to pierce the veils of his corporations to his advantage. Such a result would go against the policy justifying piercing the corporate veil, and as such, this Court will not find that Stoller has a direct interest in this suit against his corporations simply because they are arguably his alter egos. *See*

Semande, 871 N.E.2d at 272 (corporate veil not pierced to benefit of director in part because director did not stand in the position of an innocent third party creditor).

Having found that Stoller has no right to intervene based on his alleged identity with his corporations, this Court returns to its reasoning in its prior opinion. That is, the Defendants are now part of Stoller's Chapter 7 bankruptcy estate. Accordingly, Stoller no longer holds any interest in the Defendants. *See Spenlinhauer v. O'Donnell*, 261 F.3d 113, 118 (1st Cir. 2001) ("The advent of the chapter 7 estate and the appointment of the chapter 7 trustee divest the chapter 7 debtor of all right, title and interest in nonexempt property of the estate at the commencement of the case"). At this juncture, it is the Trustee, and not Stoller, that has the authority to administer all aspects of Defendants' business, including this lawsuit. *See Cable v. Ivy Tech State Coll.*, 200 F.3d 467, 472 (7th Cir. 1999) (in Chapter 7 bankruptcy proceedings, "*only* the trustee has standing to prosecute or defend a claim belonging to the estate") (emphasis in original) *citing In re New Era, Inc.*, 135 F.3d 1206, 1209 (7th Cir. 1998) (for the proposition that "Chapter 7 trustee has exclusive right to represent debtor in court"). Therefore,

because Stoller has no right to intervene by piercing the corporate veil that he himself erected and because his ownership interests passed to his Bankruptcy estate, this Court again finds that Stoller has no direct interest in this litigation and therefore denies his Motion to Intervene.

CONCLUSION AND ORDER

For the reasons stated above, Stoller's Motion to Intervene is denied. This does not, however, fully resolve the issues presented to this Court on remand. In its opinion remanding this case, the Seventh Circuit first questioned whether Stoller's corporations are subject to suit absent Stoller's involvement. Second, it noted that causes of action that arise before a debtor files for bankruptcy follow his bankruptcy estate, whereas causes of action that arise after the creation of a bankruptcy estate belong to the debtor, and that despite the fact that Google here has sued the bankruptcy estate and dealt with the Trustee, it has taken the position in the bankruptcy court that this suit arose after Stoller filed for bankruptcy. Some facts, however, indicate that the cause of action actually arose before Stoller filed for bankruptcy. As such, the Seventh Circuit questioned whether the trustee and the bankruptcy estate were properly involved in this case. In order to resolve these issues before the case proceeds further,

this Court directs the parties to submit position papers regarding the extent to which Stoller's corporations are subject to suit and when this case arose and as such the propriety of the involvement of the bankruptcy estate. The parties must submit such position papers within 21 days of this order.

So ordered. August 17, 2009

Appeal No. 09-3569
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

GOOGLE INC.,

Plaintiff, vs.

CENTRAL MFG. INC. a/k/a CENTRAL MFG. CO., a/k/a CENTRAL MFG. CO. (INC.), a/k/a CENTRAL MANUFACTURING COMPANY, INC. and a/k/a CENTRAL MFG. CO. OF ILLINOIS; STEALTH INDUSTRIES, INC. a/k/a RENTAMARK and a/k/a RENTAMARK.COM; and
LEO D. STOLLER a/k/a LEO REICH,

Defendants.

PERMANENT INJUNCTION AND FINAL JUDGMENT AS TO DEFENDANTS CENTRAL MFG. INC. AND STEALTH INDUSTRIES, INC.

APPENDIX A-8

This Stipulated Permanent Injunction and Final Judgment is entered into, on the one hand, by Plaintiff Google Inc. ("Google") and, on the other hand, by Defendant Central Mfg. Inc., also known without limitation as Central Mfg. Co., Central Mfg. Co. (Inc.), Central Manufacturing Company, Inc. and/or Central Mfg. Co. of Illinois (collectively, "Central Mfg."), and Defendant Stealth Industries, Inc. ("Stealth") (collectively, Central Mfg. and Stealth are the "Entity Defendants"). The parties having stipulated to the entry of the following Stipulated Permanent Injunction and Final Judgment, and good cause appearing for the entry thereof:

1. Pursuant to the Assignment attached hereto as Exhibit 1 and as approved by Order of the United States Bankruptcy Court for the Northern District of Illinois, The Society for the Prevention of Trademark Abuse, LLC, a limited liability company organized under the laws of Delaware (hereinafter The Society), has acquired all right, title and interest in the stock and all other assets, including any and all trademark rights, held by the Entity Defendants.

The Sale of the Assets to the Purchaser was free and clear of all liens and all other claims whatsoever pursuant to Section 363(f) of the Bankruptcy Code, whether known or unknown, including, but not limited to, liens and claims of any of the Debtor's creditors, vendors, suppliers, employees or lessors, and The Society is not liable in any way (as a successor to the Debtor or otherwise) for any claims that any of the foregoing or any other third party may have against the Debtor or the Assets. Any and all alleged liens and claims on the Assets were transferred, affixed, and attached to the proceeds of the Sale, with the same validity, priority, force, and effect as such liens had been upon such property immediately prior to the Closing. Debtor or any person or entity acting in concert with the debtor were and continue to be enjoined from asserting any right, title, interest or claim in the assets following consummation of the sale by the trustee.

2. Leo Stoller was discharged as an officer or representative in any capacity of the Entity Defendants on August 20, 2007. Lance G. Johnson became the President of the Entity Defendants and oversaw the dissolution of the incorporated Entity Defendants by April 2008. All assets and claims for

each of the Entity Defendants have been assigned to The Society. The Society thus stands as a successor in interest to any claims available to any of the Entity Defendants.

3. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338, 18 U.S.C. § 1964(c) and principles of supplemental jurisdiction under 28 U.S.C. § 1367(a), as well as personal jurisdiction over the Entity Defendants.

4. The Entity Defendants have been duly served with the summons and Complaint

in this matter. If service is required in The Society, The Society hereby waives service and acknowledges receipt of the Complaint in this matter.

5. Judgment is hereby entered in favor of Plaintiff Google, and against each of the

Entity Defendants and The Society, on Plaintiff Google's claims for false advertising in violation of the Lanham Act, 15 U.S.C. § 1125(a)(1)(B), for violations of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961 et seq. and for unfair competition.

6. The Entity Defendants and The Society admit each and every fact alleged in the

Complaint. Without limiting the generality of the foregoing, each of the Entity Defendants and The Society admit and represent:

(a) None of the Entity Defendants or The Society has or has had any right,
title or interest of any kind in the GOOGLE mark or in any mark, trade name or designation that is confusingly similar or dilutes to the GOOGLE mark;

(b) None of the Entity Defendants or The Society has or has had any right or
lawful ability to license, or offer for licensing, the GOOGLE mark, or any mark or designation that is confusingly similar to or dilutes the GOOGLE mark, in connection with any goods, services or commercial activities; and

(c) None of the Entity Defendants or The Society has or has had any right or
lawful ability to hold themselves out as or to identify themselves as any business entity of any kind using, in whole or in part and regardless of what other terms may be included, the GOOGLE mark, or any mark or designation that is confusingly similar to or dilutes, the GOOGLE

mark, including without limitation any of the following: "GOOGLE," "GOOGLETM BRAND TRADEMARK LICENSING," "GOOGLE LICENSING" and/or "GOOGLE BRAND PRODUCTS & SERVICES."

7.Each of the Entity Defendants and The Society, as well as their officers, directors,
principals, agents, servants, employees, successors, assigns, parents, subsidiaries and affiliates and all those acting on their behalf or in concert or participation with them, shall be and hereby are, effective immediately, permanently enjoined from engaging in any of the following acts:

(a) claiming in any advertising, promotion or other materials, including without limitation on any web site, any right, title or interest in GOOGLE, whether in whole or in part and regardless of what other terms may be included, or in any mark, trade name, term, word or designation that is confusingly similar to or dilutes the GOOGLE mark;

(b) instituting, filing or maintaining, or threatening to institute, file or maintain, any application, registration, suit, action, proceeding or any other matter with any Court, with the United States Trademark Office, with the United States Trademark Trial and Appeal Board or with any other judicial or administrative body that asserts any right, title or interest in GOOGLE, whether in whole or in part and regardless of what other terms may be included, or in any mark, trade name, term, word or designation that is confusingly similar to or dilutes the GOOGLE mark;

(c) holding themselves out as or identifying themselves in any manner as any business entity of any kind using, whether in whole or in part and regardless of what other terms may be included, the GOOGLE mark or any mark, trade name, term, word or designation that is confusingly similar to or dilutes the GOOGLE mark, including without limitation any of the following: "GOOGLE," "GOOGLETM BRAND TRADEMARK LICENSING," "GOOGLE LICENSING" and/or "GOOGLE BRAND PRODUCTS & SERVICES";

(d) licensing, offering to license, assigning or offering to assign or claiming the ability to license or assign any mark, term, word or designation that embodies, incorporates or uses, in whole or in part and regardless of what other terms may be included, the GOOGLE mark or any mark or designation that is confusingly similar to or dilutes the GOOGLE mark;

(e) interfering with, including without limitation by demanding in any manner any payment or other consideration of any kind for, Plaintiff's use, whether past, current or future, of any mark, name or designation embodying, incorporating or using, in whole or in part and regardless of what other terms may be included, Plaintiff's GOOGLE mark;

(f) using the GOOGLE mark, whether in whole or in part and regardless of what other terms may be included, or any mark, trade name, term, word or designation that is confusingly similar to or dilutes the GOOGLE mark, in connection with the sale, offering for sale, licensing, offering for license, importation, transfer, distribution, display, marketing, advertisement or promotion of any goods, services or commercial activity of any Defendant;

(g) engaging in acts of unfair competition or passing off with respect to Plaintiff Google;

(h) assisting, aiding or abetting any other person or entity in engaging in or performing any of the activities referred to in subparagraphs (a) through (g) above.

8. Each party to this Permanent Injunction and Final Judgment shall bear its respective attorney's fees, costs and expenses incurred in this action.

9. The Entity Defendants and The Society hereby waive any further findings of fact and conclusions of law in connection with this Permanent Injunction and Final Judgment and all right to appeal therefrom. It is the intention of the parties hereto that this Permanent Injunction and Final Judgment be afforded full collateral estoppel and res judicata effect as against the Entity Defendants and The Society and shall be enforceable as such. The Entity Defendants and The Society further hereby waive in this proceeding, including without limitation in any proceedings brought to enforce and/or interpret this Permanent Injunction and Final Judgment, and in any future proceedings between the parties any and all defenses and/or claims that could have been

asserted by the Entity Defendants or The Society against Plaintiff, including without limitation any and all defenses, claims or contentions that Plaintiff's GOOGLE mark is invalid and/or unenforceable and/or that any person or entity other than Plaintiff has superior rights to the GOOGLE mark. Without limiting the generality of the foregoing, in the event that Plaintiff brings any proceeding to enforce this Permanent Injunction and Final Judgment, no Entity Defendant or The Society shall be entitled to assert, and each Entity Defendant and The Society hereby waives any right to assert, any defense or contention other than that he or it has complied or substantially complied in good faith with the terms of this Permanent Injunction and Final Judgment.

10. Nothing in this Judgment is intended to waive, limit or modify in any manner, and shall not be construed to waive, limit or modify, Google's claims, rights or remedies against Leo Stoller, including without limitation for his acts and/or omissions as an officer, director, shareholder, representative or agent of Defendants, or against other person or entity other

Central Mfg. and Stealth in connection with this action or otherwise.

11. This Court shall retain jurisdiction for the purposes of enforcing and/or interpreting this Permanent Injunction and Final Judgment to determine any issues which may arise concerning this Permanent Injunction and Final Judgment.

IT IS SO STIPULATED.

DATED: September , 2009

GOOGLE INC.

By: _____
One of Its Attorneys

Michael T. Zeller (ARDC No. 6226433)
QUINN EMANUEL URQUHART OLIVER & HEDGES, LLP
865 South Figueroa Street, 10th Floor
Los Angeles, California 90017
Tel.: (213) 443-3000/Fax: (213) 443-3100

Dated: September 22, 2009

CENTRAL MFG. INC., STEALTH INDUSTRIES, INC. and THE SOCIETY FOR THE PREVENTION OF TRADEMARK ABUSE, LLC

By:_____
Lance G. Johnson
Director, The Society for the
Prevention of Trademark Abuses, LLC
President, Central Mfg. Inc.
President, Stealth Industries, Inc.
c/o Roylance, Abrams, Berdo & Goodman
LLP 1300 19th Street, NW Suite 600
Washington, DC 20036
Tel: (202) 659-9076/Fax: (202) 659-9344

IT IS SO ORDERED. DATED: October 16, 2009

Appeal No. 09-3569

United States District Court, Northern District of Illinois

Case No. 07 C 385

Date: October 15, 2009

Case Title: Google, Inc. v. Central Manufacturing, et. al.

DOCKET ENTRY:

Stoller's motion for reconsideration is denied.

APPENDIX A-9

STATEMENT

Before the Court is Leo Stoller's ("Stoller") Motion for Reconsideration of the Court's August 17, 2009 Memorandum Opinion and Order denying his Motion to Intervene. O. 111.) For the reasons stated, Stoller's Motion for Reconsideration is denied.

Plaintiff Google, Inc. ("Google") filed a civil RICO action against Defendants Central Mfg. Inc. ("Central") a/k/a Central Mf. Co. a/k/a Central Mfg. Co (Inc.) a/k/a Central Manufacturing Company Inc. a/k/a Central Mfg. Co. of Illinois and Stealth Industries, Inc. ("Rentamark") a/k/a Rentamark and a/k/a Rentamark.com (collectively "Defendants") on January 19, 2007, alleging, among other things, that the Defendants and their purported principal, Stoller, are engaged in a scheme of falsely claiming trademark rights for the purpose of attempting to extort money out of legitimate commercial actors. ®. 1.) On February 6, 2007, Stoller filed a Motion to Intervene in this action which the Court denied, finding that Stoller did not have a "direct, significant legally protectable interest" in the suit because he was acting as president of the "corporate" defendants when he undertook the actions described in the Complaint, and that as a result of his bankruptcy case he no longer held a stake in those businesses. ®. 16, R. 38.) Subsequently, the Court approved

the settlement agreed to by Google and the Trustee of Stoller's bankruptcy estate and entered the permanent injunction contemplated by that agreement. ®. 57-58.) Stoller appealed both the denial of his motion to intervene and the final judgment in the lawsuit. The Seventh Circuit consolidated Stoller's appeals, vacated the final judgment issued and remanded the case for reconsideration of Stoller's Motion to Intervene. *See Google, Inc. v. Central Mfg. Inc. and Stealth Industries, Inc.*, Nos. 07-1569, 07-1612, 07-1651, 2008 WL 896376, at *5 (7th Cir. 2008). In remanding the case, the Seventh Circuit directed the Court to "resolve in the first instance whether [Central-and Rentamark] are entities that are subject to suit, whether and under what circumstances Goolge's suit in its present form can proceed without Stoller if they are not, and whether any of the unlawful conduct Google alleges gave rise to a claim that even involves the Chapter 7 estate." *Id.* After receiving the mandate, the Court reinstated Stoller's Motion to Intervene and permitted him to file a supplemental brief in support of his motion. ®. 93.)

On August 17, 2009, the Court issued a Memorandum Opinion and Order denying Stoller's Motion to Intervene finding that despite the fact that Central and Rentamark are Stoller's alter egos, Stoller cannot use the doctrine of "piercing

the corporate veil" offensively to *defend* a lawsuit. 110. at 7.) The Court noted that piercing the corporate veil is utilized only to protect third parties who have relied on the existence of the separate corporate entity, not for the benefit of the corporation itself or its shareholders. See id. After determining that Stoller was not permitted to intervene as a matter of right, per the Seventh Circuit's mandate, the Court ordered the parties to submit position papers on whether Central and Rentamark are entities that are subject to suit, and whether Google's claim arose prior to or after Stoller filed for bankruptcy to determine whether Google's claim even involves the Chapter 7 estate. (R. 2110, at 9). In its position paper, submitted on September 230, 2009, Google notified the Court that The Society for the Prevention of Trademark Abuse, LLC (the "SPTA") acquired all stock and other assets of Central and Rentamark in a bankruptcy auction under the auspices and with the approval of the Bankruptcy Court. 121, at 1.).[1]

[1] The Court notes that despite the fact that the Bankruptcy Court approved the sale of Central and Rentamark's stocks and assets to the SPTA on August 8, 2007, and all stock and assets in Central and Rentamark were transferred to the SPTA on August 20, 2007, Google did not bring this information to the Court's attention until September 9, 2009, when it made a mere passing reference to the SPTA's acquisition of Central and Rentamark. It was not until September 30, 2009, when it filed its position paper in response to the Court's request for additional information pursuant to the Seventh Circuit's mandate that Google provided the Court with additional information regarding the status of

Therefore, Stoller's Chapter 7 Trustee is no longer Central and Rentamark's representative but instead the entities are now under the ownership and control of SPTA. 121, at 2; R. 122-2, at 16-60). On August 20, 2007, the same day that the SPTA acquired ownership of Central and Rentamark, the SPTA, as the new stockholder of the corporate entity Defendants, removed Stoller from "any and all positions, offices and capacities in connection with each of the corporations." R 221, at 3; R. 122-2 at 62-63. Subsequently, on January 29, 2008, the SPTA dissolved Central and Rentamark. R 121, at 4; R. 122, Exs., 13, 14).

Federal Rules of Civil Procedure 59(e) serves the limited function of allowing courts to correct manifest errors of law or fact or consider newly discovered material evidence. See *Bordelon v. Chicago Sch. Reform Bd of Trustees*, 233 F.3d 524, 529 (7th Cir. 2000); see also *Oto v. Metropolitan Life Ins. Co.*, 224 F.3d 601, 606 (7th Cir. 2000) (manifest error is the wholesale disregard, misapplication, or failure to recognize controlling precedent). However, Rule 59(e) "does not provide a vehicle for a party to undo its own procedural failures, and it certainly does not allow a party to introduce new

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Stoller's bankruptcy proceedings and the transfer of Central's and Rentamark's stocks and assets to the SPTA.

evidence or advance legal arguments that could and should have been presented to the district court prior to the judgment." *Moro v. Shell Oil Co.*, 91 F.3d 872, 876 (7th Cir. 1996). Reconsideration is only appropriate when "the Court has patently misunderstood a party or has made a decision outside the adversarial issues presented to the Court by the parties or has made an error not of reasoning but of apprehension." *Bank of Waunakee v. Rochester Cheese Sales, Inc.*, 906 F.2d 1185, 1191 (7th Cir. 1990) (internal quotations omitted). Whether to grant a Rule 59(e) motion "is entrusted to the sound judgment of the district court." *Matter of Prince*, 85 F.3d 314, 324 (7th Cir. 1996).

Stoller's Motion for Reconsideration sets forth no newly discovered material evidence and does not identify any controlling precedent that the Court failed to recognize, misapplied or wholly disregarded. Instead, it reiterates Stoller's previous argument that "Leo Stoller has a protectable interest in this case which the existing parties may not adequately represent Stoller's interests," and goes on to assert that his "reputation" as a "nationally recognized trademark expert" will be permanently damaged if he is not allowed to defend himself in this case. ®. 111, at 3.) Although the Court must construe *pro se* filings liberally, even litigants proceeding without the benefit of counsel

must articulate some reason for disturbing the Court's judgment. *See Anderson v. Hardman*, 241 F.3d 544, 545 (7th Cir. 2001). Here, Stoller offers no articulable basis for disturbing the Court's previous ruling denying his Motion to Intervene. Courts have repeatedly held that purported injury to one's reputation is an insufficient interest

STATEMENT

Fed.R.Civ.P. 24(a). Accordingly, Stoller has failed to establish that the Court erred as to law or fact or that he has newly discovered material evidence. *See Bordelon*, 233 F.3d at 529. A meritorious motion to reconsider is rare and under Stoller's circumstances should not be granted. *See Bank of Waunakee*, 906 F.2d at 1191. Therefore, Stoller's Motion to Reconsider is denied.

Furthermore, as previously mentioned, since the Seventh Circuit's mandate, the Court has received new material information related to the corporate entity Defendants and Stoller's interest in those Defendants. Therefore, when the Seventh Circuit issued its mandate it did so under a different set of facts and circumstances. Currently, the corporate entity Defendants, Central and Rentamark, are no longer part of Stoller' s bankruptcy estate but instead are currently under the control and

ownership of the SPTA and the SPTA removed Stoller from "any and all positions, offices, and capacities in connection with each of the corporations." O. 121.) Therefore, Google's claims against Central and Rentamark no longer involve Stoller's Chapter 7 estate. Furthermore, the circumstances giving rise to the Seventh Circuit's concern as to whether Central and Rentamark are entities that are subject to suit no longer exist because under the ownership and control of the SPTA they are no longer Stoller's alter egos. *See Palen v. Daewoo Motor Co., 832* N.E. 2d 173, 185 (III. App. Ct. 2005) (suits against legally nonexistent entities renders the suit void *ab initio).* Put another way, after the SPTA acquired all stock and assets in Central and Rentamark, they became corporate entities distinguishable from Stoller and not just trade names through which Stoller conducts business as an individual, making them entities that are subject to
suit. 2

Lastly, in his Motion for Reconsideration Stoller requests that the Court suspend the current action pending his appeal of the denial of his Motion to Intervene if his Motion to Reconsider is denied. ®. 111, at ¶ 10.) Having no right to intervene, however, Stoller has no right to file a motion to suspend ongoing proceedings. Stoller has not identified-and this Court is not aware of-any procedural mechanism

by which a non-party may file a motion to suspend ongoing proceedings without intervening therein.

Footnote 2. The Court notes that Central's and Rentamark's dissolution does not prevent them from being subject to suit in the present action. Under both Illinois and Delaware state law, a corporation can participate in litigation after being dissolved if the litigation was initiated before or within five years or three years, respectively, after dissolution. *See* 805 ILCS 5/12.80 (corporation can sue or be sued on claims brought before and up to five years post-dissolution); 8 Del. C. § 278 (corporation can sue or be sued on claims brought before and up to three years post dissolution.). Here, Google filed its Complaint against Central and Rentamark on January 19, 2007 and the corporate entities were dissolved in January and April 2008, respectively. Therefore, Central and Rentamark, although dissolved are still subject to suit in this case.

Appeal No. 09 2388

United States District Court,

Northern District of Illinois

CASE NO. 06 C 6950

DATE: 4/24/2009

WILLIAM J. HIBBLER, Judge Presiding

DOCKET ENTRY TEXT:

Appellant's motion to reinstate [#49] is denied. Appellees presented valid objections to the motion and Appellant failed to respond in a timely manner.

APPENDIX A-10

Appeal No. 09 2388

United States District Court,

Northern District of Illinois

CASE NO. 07 C 3322

DATE: 5/8/2009

WILLIAM J. HIBBLER, Judge Presiding

DOCKET ENTRY TEXT:

Appellant's motion for leave to appeal *in forma pauperis* [16] is denied. The Court hereby certifies that this appeal is not taken in good faith.

The Court is convinced that appellant's appeal presents no substantial question for review and that an appeal will be futile. The Court has the duty, therefore, to certify that the appeal is not taken in good faith. *Davis v. U.S.*, 214 F.2d 594, 596 (7th Cir. 1954) (citing *Higgins v. Steele*, 195 F.2d 366, 369 (8th Cir. 1952)). "An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." 28 U.S.C. § 1915(a)(3). Thus, the Court denies appellant's motion for leave to appeal *in forma pauperis*.

APPENDIX A-11

Appeal No. 09 2387

United States District Court,

Northern District of Illinois

CASE NO. 07 C 3322

DATE: 4/24/2009

WILLIAM J. HIBBLER, Judge Presiding;

DOCKET ENTRY TEXT:

Appellant's motion to intervene [#5] is denied. Appellees presented valid objections to the motion and Appellant failed to respond in a timely manner.

APPENDIX A 12

Appeal No. 09-2385

United States District Court,

Northern District of Illinois

CASE NO. 07 4692

DATE: 5/8/09

WILLIAM J. HIBBLER, Judge Presiding;

DOCKET ENTRY TEXT:

Appellant's motion for leave to appeal *in forma pauperis* [28] is denied. The Court hereby certifies that this appeal is not taken in good faith.

The Court is convinced that appellant's appeal presents no substantial question for review and that an appeal will be futile. The Court has the duty, therefore, to certify that the appeal is not taken in good faith. *Davis v. U.S.*, 214 F.2d 594, 596 (7th Cir. 1954) (citing *Higgins v. Steele*, 195 F.2d 366, 369 (8th Cir. 1952)).

APPENDIX A 13

An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." 28 U.S.C. ? 1915(a)(3). Thus, the Court denies appellant's motion for leave to appeal *in forma pauperis*.

Appeal No. 09-2387

United States District Court,

Northern District of Illinois

CASE NO. 07 3322

DATE: 5/8/09

WILLIAM J. HIBBLER, Judge Presiding

DOCKET ENTRY TEXT:

Appellant's motion for leave to appeal *in forma pauperis* [16] is denied. The Court hereby certifies that this appeal is not taken in good faith.

The Court is convinced that appellant's appeal presents no substantial question for review and that an appeal will be futile. The Court has the duty, therefore, to certify that the appeal is not taken in good faith. *Davis v. U.S.*, 214 F.2d 594, 596 (7th Cir. 1954) (citing *Higgins v. Steele*, 195 F.2d 366, 369 (8th Cir. 1952)).

APPENDIX A-14

An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." 28 U.S.C. ? 1915(a)(3). Thus, the Court denies appellant's motion for leave to appeal *in forma pauperis*.

Appeal No. 09-2386

United States District Court,

Northern District of Illinois

CASE NO. 07 3820

DATE: 5/8/09

WILLIAM J. HIBBLER, Judge Presiding

DOCKET ENTRY TEXT:

Appellant's motion for leave to appeal *in forma pauperis* [17] is denied. The Court hereby certifies that this appeal is not taken in good faith.

The Court is convinced that appellant's appeal presents no substantial question for review and that an appeal will be futile. The Court has the duty, therefore, to certify that the appeal is not taken in good faith. *Davis v. U.S.*, 214 F.2d 594, 596 (7th Cir. 1954) (citing *Higgins v. Steele*, 195 F.2d 366, 369 (8th Cir. 1952)).

APPENDIX A-15

An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." 28 U.S.C. ? 1915(a)(3). Thus, the Court denies appellant's motion for leave to appeal *in forma pauperis*.

Appeal No. 09-2372

United States District Court,

Northern District of Illinois

CASE NO. 07 4320

DATE: 5/8/09

WILLIAM J. HIBBLER, Judge Presiding

DOCKET ENTRY TEXT:

Appellant's motion for leave to appeal *in forma pauperis* [31] is denied. The Court hereby certifies that this appeal is not taken in good faith.

The Court is convinced that appellant's appeal presents no substantial question for review and that an appeal will be futile. The Court has the duty, therefore, to certify that the appeal is not taken in good faith. *Davis v. U.S.*, 214 F.2d 594, 596 (7th Cir. 1954) (citing *Higgins v. Steele*, 195 F.2d 366, 369 (8th Cir. 1952)).

APPENDIX A-16

An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." 28 U.S.C. Sec. 1915(a)(3). Thus, the Court denies appellant's motion for leave to appeal *in forma pauperis*.

Appeal No. 09-2363

United States District Court,

Northern District of Illinois

CASE NO. 07 1315

DATE: 4/24/09

WILLIAM J. HIBBLER, Judge Presiding

DOCKET ENTRY TEXT:

Appellant's motion to intervene [#12] is denied. Appellees presented valid objections to the motion and Appellant failed to respond in a timely manner.

APPENDIX A-17

Appeal No. 09-2363

United States District Court,

Northern District of Illinois

CASE NO. 07 1315

DATE: 5/8/09

WILLIAM J. HIBBLER, Judge Presiding

DOCKET ENTRY TEXT:

Appellant's motion for leave to appeal *in forma pauperis* [37] is denied. The Court hereby certifies that this appeal is not taken in good faith.

The Court is convinced that appellant's appeal presents no substantial question for review and that an appeal will be futile. The Court has the duty, therefore, to certify that the appeal is not taken in good faith. *Davis v. U.S.*, 214 F.2d 594, 596 (7th Cir. 1954) (citing *Higgins v. Steele*, 195 F.2d 366, 369 (8th Cir. 1952)).

Appeal No. 09-2362

United States District Court,

Northern District of Illinois

CASE NO. 07 4319

DATE: 5/8/09

WILLIAM J. HIBBLER, Judge Presiding

DOCKET ENTRY TEXT:

Appellant's motion for leave to appeal *in forma pauperis* [17] is denied. The Court hereby certifies that this appeal is not taken in good faith.

The Court is convinced that appellant's appeal presents no substantial question for review and that an appeal will be futile. The Court has the duty, therefore, to certify that the appeal is not taken in good faith. *Davis v. U.S.*, 214 F.2d 594, 596 (7th Cir. 1954) (citing *Higgins v. Steele*, 195 F.2d 366, 369 (8th Cir. 1952)).

APPENDIX A-19

Appeal No. 09-2354

United States District Court,

Northern District of Illinois

CASE NO. 07 3631

DATE: 4/24/09

WILLIAM J. HIBBLER, Judge Presiding

DOCKET ENTRY TEXT:

Appellant's motion to intervene [#5] is denied. Appellees presented valid objections to the motion and Appellant failed to respond in a timely manner.

APPENDIX A-20

United States District Court,

Northern District of Illinois

CASE NO. 07 2223

DATE: 5/8/09

WILLIAM J. HIBBLER, Judge Presiding

DOCKET ENTRY TEXT:

Appellant's motion for leave to appeal *in forma pauperis* [28] is denied. The Court hereby certifies that this appeal is not taken in good faith.

The Court is convinced that appellant's appeal presents no substantial question for review and that an appeal will be futile. The Court has the duty, therefore, to certify that the appeal is not taken in good faith. *Davis v. U.S.*, 214 F.2d 594, 596 (7th Cir. 1954) (citing *Higgins v. Steele*, 195 F.2d 366, 369 (8th Cir. 1952)).

Appeal No. 09-2352

United States District Court,

Northern District of Illinois

CASE NO. 07 3347

DATE: 5/8/09

WILLIAM J. HIBBLER, Judge Presiding

DOCKET ENTRY TEXT:

Appellant's motion for leave to appeal *in forma pauperis* [41] is denied. The Court hereby certifies that this appeal is not taken in good faith.

The Court is convinced that appellant's appeal presents no substantial question for review and that an appeal will be futile. The Court has the duty, therefore, to certify that the appeal is not taken in good faith. *Davis v. U.S.*, 214 F.2d 594, 596 (7th Cir. 1954) (citing *Higgins v. Steele*, 195 F.2d 366, 369 (8th Cir. 1952)).

Appeal No. 09 3463

United States District Court,

Northern District of Illinois

CASE NO. 07 6520

DATE: 9/21/09

WILLIAM J. HIBBLER, Judge Presiding,

DOCKET ENTRY TEXT:

Defendant's Motion to Dismiss [3] is GRANTED due to appellant's failure to respond.

APPENDIX A 23

United States District Court,

Northern District of Illinois

CASE NO. 07 6520

DATE: 10/2/2009

WILLIAM J. HIBBLER, Judge Presiding

DOCKET ENTRY TEXT:

The Court DENIES Appellant's Motion for Reconsideration [7]. As indicated on Pure Fishing's Certificate of Service, Pure Fishing served Appellant with a copy of its motion to dismiss. Moreover, the Court mailed Appellant a copy of its order of April 23, 2009 directing Appellant to respond to that motion. Appellant's claim that the Court lacked jurisdiction is unfounded, and Appellant has failed to state any grounds for reconsideration. The case having been closed, the Court terminates all dates and motions as moot.

Appeal No. 09-2352

United States District Court,

Northern District of Illinois

CASE NO. 07 C 3347

DATE: 5/8/09

WILLIAM J. HIBBLER, Judge Presiding

DOCKET ENTRY TEXT:

Appellant's motion for leave to appeal *in forma pauperis* [41] is denied. The Court hereby certifies that this appeal is not taken in good faith.

The Court is convinced that appellant's appeal presents no substantial question for review and that an appeal will be futile. The Court has the duty, therefore, to certify that the appeal is not taken in good faith. *Davis v. U.S.*, 214 F.2d 594, 596 (7th Cir. 1954) (citing *Higgins v. Steele*, 195 F.2d 366, 369 (8th Cir. 1952)).

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

In re Leo D. Stoller

Court of Appeals No. 08-4240

District Court No. 07-cv-5118

Magistrate Judge Geraldine Soat Brown Special Master

To the Honorable United States Court of Appeals for
the Seventh Circuit

REPORT OF THE SPECIAL MASTER AND REQUEST FOR INSTRUCTIONS

APPENDIX A-26

INTRODUCTION AND SUMMARY

On January 27, 2009, appellant Leo D. Stoller sought leave from the Court of Appeals for the Seventh Circuit to appeal *in forma pauperis*. ("IFP Motion.") [7th Cir. No. 08-4240, dkt 9.] The Court of Appeals had concerns about the truth of certain statements in Mr. Stoller's IFP Motion and supporting affidavit. After issuing two show cause orders and receiving submissions from Mr. Stoller and a creditor of Mr. Stoller's bankruptcy estate, Pure Fishing, Inc. ("Pure Fishing"), a panel of the Court of Appeals appointed this court as special master to take evidence and make a report and recommendation regarding the disposition of Mr. Stoller's appeal. (May 14, 2009 Order.) [7th Cir. No. 08-4240, dkt 23.] Since the referral of this matter, Mr. Stoller, Pure Fishing and the trustee of Mr. Stoller's estate have submitted statements to this court. Those statements, along with

information already in the record of various court proceedings, raise substantial questions about Mr. Stoller's honesty but also suggest that considerably more could be explored. To this end, Mr. Stoller is being ordered to produce certain documents and to answer certain questions already raised. An evidentiary hearing has not yet been held, however, because still further discovery might be pursued to prepare for such a hearing, possibly including obtaining testimony and documents from persons not within the range of a subpoena from the Northern District of Illinois. This court requests further guidance from the Court of Appeals as to whether that additional discovery should be undertaken.

BACKGROUND

On December 20, 2005, Leo Stoller filed a Chapter 13 voluntary petition for bankruptcy in the Bankruptcy Court for the Northern District of Illinois. [Bankr. N.D. Ill. No. 05-bk-64075, dkt 1.]' Mr. Stoller's bankruptcy proceeding was converted to a Chapter 7 case on Pure Fishing's motion and the Bankruptcy Court's findings about Mr. Stoller's lack of verifiable business records and his questionable conveyance of real property to his daughter Julia Bishop shortly before

his bankruptcy filing. *In re Leo Stoller*, 351 B.R. 605 (Bankr. N.D. Ill. 2006).[2] The Chapter 7 bankruptcy proceeded for more than a year thereafter and resulted in among other things, a sale of certain of Mr. Stoller's assets. (Sale Mem. & Op.) [Bankr. N.D. Ill. 05-bk-64075, dkt 565.]

Unless otherwise noted, docket references herein are to the district court docket in this matter: *In re Leo Stoller*, N. D. Ill. No. 07-cv-5118. Documents from other cases are cited with reference to their court, case number and docket entry number (where available).

[2] Pure Fishing had been a defendant in a lawsuit brought by Mr. Stoller's company, Central Mfg. Co. *Central Mfg. Co. v. Pure Fishing, Inc*, 05 cv 725 (N.D. Ill.). Shortly before Mr. Stoller's bankruptcy filing, Pure Fishing had obtained as a sanction the dismissal with prejudice of Central Mfg. Co.'s case against Pure Fishing and a default judgment on Pure Fishing's counterclaims. (Nov. 16, 2005 Order.) [N.D. Ill. No. 05-cv-725, dkt 185-2.]

Thereafter, Mr. Stoller attempted to appeal *pro se* to the District Court several of the Bankruptcy Court's rulings. (Notice of App.) [Dkt 1.] His appeal was terminated based on a previously entered District Court Executive Committee order barring Mr. Stoller from filing any new civil action or proceeding in the United States District Court for the Northern District of Illinois without first obtaining leave from the committee. (Dec. 2, 2008 Order.) [Dkt 91[3] Mr. Stoller next filed his notice of appeal to the Court of Appeals from the District Court's termination decision. (Notice of App.) [7th Cir. No. 08-4240, dkt 1.]

On January 27, 2009, Mr. Stoller filed the IFP Motion at issue here with the Court of Appeals. In his supporting affidavit, Mr. Stoller attested that he had no money in any bank account, was unemployed, and the only money he received in the preceding 12 months had been his monthly $589 allotment from social security. (IFP Mot., Group Ex. at 2-6.) Although he itemized his monthly expenses as $500 for rent or mortgage and $61 for food, Mr. Stoller declared that his total monthly expenses were the exact amount of his social security payments, $589. *(Id.)* The Court of Appeals denied the motion, noting that Mr. Stoller had only seventh months earlier paid a $10,000 sanction fee to the court. (Feb. 5, 2009 Order.) [7th Cir. No. 08-4240, dkt 10.] Questioning how Mr. Stoller could

have paid such a large fine so recently in light of his sworn statements of

[3] The District Court Executive Committee Order incorporated an earlier finding of the District Court that Mr. Stoller "appears to be running an industry that produces often spurious, vexatious, and harassing federal litigation," noting that Mr. Stoller had filed at least 49 lawsuits in the district, individually or through one of his corporations, and finding that "reasonable and necessary restraints must be imposed upon Mr. Stoller's ability to file new civil cases in this District *pro se.*" (March 8, 2007 Order.) [N.D. Ill. No. 07-cv-1435, dkt 1.] Mr. Stoller has at various times also been barred or otherwise limited from filing by the Court of Appeals and the Bankruptcy Court. (*See e.g.* Aug. 23, 2007 Order [7th Cir., 07-1569]; Aug. 7, 2007 Order [Bankr. N.D. Ill. No. 05-bk64075, dkt 557]; Oct. 31, 2007 Order [Bankr. N.D. Ill. No. 05-bk-64075, dkt 618].)

indigency, the court ordered Mr. Stoller to show cause why the appeal should not be dismissed pursuant to 28 U.S.C. § 1915(e). *(Id.)* Mr. Stoller responded to the rule, reasserting his status as a pauper, and explaining that he had paid the $10,000 sanction in June 2008 with funds that his brother Christopher Stoller had given him (Resp. Rule to Show Cause.) [7th Cir. No. 08-4240, dkt 11.] Mr. Stoller also said that his brother could no longer provide him any funds since he had declared bankruptcy two months earlier, in December 2008. *(Id.)* Mr. Stoller attached to his submission a declaration swearing to the truth of the statements set forth therein, but he did not sign the declaration. *(Id.* at 4.)

On February 17, 2009, the Court of Appeals denied Mr. Stoller's IFP Motion and ordered him to pay the required docketing fee before the appeal would go forward. [7th Cir. No. 08-4240, dkt 12.] On April 7, 2009, Mr. Stoller paid the docketing fee. [7th Cir. No. 08-4240, dkt 15.] Noting the discrepancy between Mr. Stoller's sworn lack of discretionary income and the fact that he had paid the $455 fee, the Court issued a second order to show cause why the appeal should not be dismissed for an untrue allegation of poverty, pursuant to 28 U.S.C. § 1915(e)(2)(A). (April 24, 2009 Order.) [7th Cir. No. 08-4240, dkt 18.] Mr. Stoller responded to the rule,

asserting that his claim of poverty had been true and that he had paid the filing fee with funds he had borrowed from his adult daughter Julia Bishop. (Resp. to Court Order.) [7th Cir. No. 08-4240, dkt 19.] To support his explanation, Mr. Stoller included in his response his signed declaration and a declaration purportedly signed by his daughter. *(Id.* at 3-4.)

Pure Fishing took issue with Mr. Stoller's submission to the Court of Appeals, and on May 14, 2009, filed a response to it. (Pure Fishing's Resp.) [7th Cir. No. 08-4240, dkt 22.] Pure Fishing urged the Court of Appeals to find that Mr. Stoller's submission had been untruthful, arguing that it was inconsistent with verified claims that Mr. Stoller had made in other court proceedings and that it relied on what appeared to be a forged signature of Julia Bishop. *(Id.* at 1-3.) Pure Fishing asked the Court of Appeals to impose sanctions against Mr. Stoller including dismissal of his appeal and reinstatement of a restriction on Mr. Stoller's ability to file in the courts within the Seventh Circuit. *(Id.* at 3.)

The Court of Appeals referred the matter here for recommended disposition. (May 14, 2009 Order.) [7th Cir. No. 08-4240, dkt 23.] The special master was appointed to, among other things, take testimony, hear evidence, make credibility findings, and issue a report and recommendation as to the honesty of Mr. Stoller, and thus the proper disposition of the appeal. *(Id.)* The next day, Mr. Stoller submitted to the Court of Appeals his response to Pure Fishing's submission. (Stoller's Resp.) [7th Cir. No. 08-4240, dkt 24.] In his response, Mr. Stoller vigorously rejected Pure Fishing's claims and reasserted his indigency, insisting that his "sole source of income is his social security fund and food stamps." *(Id.* at 2.)

PROCEEDINGS ON THE REFERRAL

Proceedings on the referral were initially delayed because Mr. Stoller was incarcerated in Cook County Jail as a result of a contempt finding in his divorce proceeding in the Circuit Court of Cook County. *(See* April 24, 2009 Order.) [Cir. Ct. Cook County No. 05-D-007216.][4] Although notice of the special master proceedings was provided to Mr. Stoller's divorce attorney as well as to each attorney who had entered an appearance in his

pending cases in the Court of Appeals, no one appeared on Mr. Stoller's behalf for the first two scheduled status hearings. *(See* July 8, 2009 and July 27, 2009 Orders.) [Dkt 32, 33.] Mr. Stoller appeared at the third hearing, however, and a schedule was set for the submission of statements in anticipation of an evidentiary hearing. (Aug. 24, 2009 Order.) [Dkt 34.] Any person or party interested in presenting evidence at the evidentiary hearing was ordered to file a statement setting out: (1) the name of the party or person and counsel's name; (2) the subject of the proposed evidence; (3) the names of witnesses; and (4) a list of exhibits to be introduced. *(Id.)*

[4] Stoller was ordered released from jail on July 15, 2009. *(See* July 15, 2009 Order.) [Cir. Ct. Cook County No. 05-D-007216.]

Shortly thereafter, Mr. Stoller moved for the appointment of counsel, again emphasizing his indigency. (Mot. to App.) [Dkt 35.] In the interest of justice and to aid in an expeditious conclusion of this matter, attorney Beth Davis was appointed to represent Mr. Stoller for purposes of the special master proceedings. (Sept. 2, 2009 Order.) [Dkt 37.] The appointment was made without a finding as to Mr. Stoller's alleged indigency or his claim of a right to appointed counsel. *(Id.)*

At the next status hearing, Mr. Stoller's submission of a statement was stayed based on his counsel's concerns about a possible grand jury investigation involving Mr. Stoller. (Sept. 25, 2009 Order.) [Dkt 40.] On September 30, 2009, both Pure Fishing and the bankruptcy trustee for Mr. Stoller's estate submitted their statements. (Pure Fishing's Stmt., Trustee's Subm.) [Dkt 41, 42.] The trustee's submission supported Pure Fishing's statement, and relied principally on Pure Fishing's identification of issues and evidence supporting its conclusion that Mr. Stoller has not been truthful with the Court of Appeals. (Trustee's Subm. at 2.)

Two weeks later, another status hearing was held and a deadline was set for Mr. Stoller's submission. (Oct. 15, 2009 Order.) [Dkt 43.] Shortly thereafter, a preservation order was issued covering all documents that constitute, contain or refer to matters within the scope of the Court of

Appeals' May 14, 2009 referral order. (Oct. 19, 2009 Order.) [Dkt 44.] On October 21, 2009, Mr. Stoller submitted his statement. (Stoller's Stmt.) [Dkt 46.]

FACTS

Based on the proceedings to date there are a number of areas of inquiry apparently relevant to the referral. First, there are the statements made by Mr Stoller and other relevant actors (like his brother Christopher Stoller) in other court proceedings. Second, there are facts alleged by Pure Fishing in its statement for which there already appears to be some evidence but which could also be further developed with additional discovery.

A. Evidence From Other Proceedings

As Pure Fishing correctly observes, Mr. Stoller is a frequent litigant. (Pure Fishing's Stmt. at 2, 9-12 (collecting cases and noting the many in which Mr. Stoller has been sanctioned).) In addition, it appears that Mr. Stoller has recently submitted at least one expert report in a pending case for which, according to

the filings in that case, he was paid a fee that should have been, but was not, disclosed in his submissions to the Court of Appeals (and to this court when he sought appointment of counsel). Judicial notice may be taken of Mr. Stoller's other filings without determining the truth of the matters asserted in those various filings. *See General Electric Capital Corp. v. Lease Resolution Corp.*, 128 F.3d 1074, 1081-82 (7th Cir. 1997). Thus, a review of filings in some of the other cases was undertaken to locate evidence and information relevant to this referral. This report does not reach conclusions about the truth of the statements made in these other cases, but one conclusion that can be reached is that those statements are contrary to Mr. Stoller's statements to the Court of Appeals in this case.

1Conrad v. Westport Marine, Inc.

Mr. Stoller's "Expert Damage Opinion" report was filed on September 1, 2009, in *Conrad v. Westport Marine, Inc.* (Expert Rpt.) [W.D. Wis. No. 09-cv-00049, dkt 54.][5] In it Mr. Stoller claims to have "been involved in" more than 60 trademark infringement lawsuits and to have acted as an expert witness in such litigation. (Expert Rpt. at 4.) The report lists three manuals written by Mr. Stoller and published by "Dark Star" in 2008: "Manual for the Pro Se Litigant," "How to Retain the 'Right' Attorney," and "How to File a Patent." *(Id.* at 6.) It describes his "professional appointments" as the executive director of "Americans for the Enforcement of Intellectual Property Rights" and the board president of "Americans for the Enforcement of Attorney Ethics" and "Americans for the Enforcement of Judicial Ethics." *(Id.* at 5-6)[6] No income associated with any of these endeavors was reported in Mr. Stoller's IFP Motion in this case.'

On the defendants' motion in the *Conrad* case, the court struck Mr. Stoller's report for failure to comply with the requirements of Fed. R. Civ. P. 26(a)(2)(B). (Oct. 1, 2009 Order.) [W.D. Wis.

[5] According to the report, Mr. Stoller offers litigation-related services as an expert in "trademarks, trademark valuations, trademark litigation support services, and trademark testimony." (Expert Rpt. at 4.)

[6] He also claims to have "sued more lawyers for legal malpractice in Chicago, Illinois than any other party." (Expert Rpt. at 5.)

Pure Fishing claims (without citation) that an internet posting "believed- to be from respondent alleges a membership [in the Association for the Enforcement of Intellectual Property Rights] of 80,032 with annual membership dues of $25-$250." (Pure Fishing's Stmt. at 14.)

No. 09-cv-00049, dkt 76.][8] In moving to strike the report, the defendants argued, among other things, that the report failed to identify any case in which Mr. Stoller had provided expert testimony, his hourly rate or his expected compensation for future testimony. (Mot. to Strike at 3.) [W.D. Wis. No. 09-cv-00049, dkt 67.] In opposing the motion to strike, the plaintiff asserted that Mr. Stoller's previous "four years" as an expert witness was "not applicable," and that she had paid him $300 for his report. (Pl.'s Resp. Mot. Strike at 2.) [W.D. Wis. No. 09-cv-00049, dkt 69.] She supported her response with what purports to be an invoice from Mr. Stoller to the plaintiff. *(Id.* at Ex. 3.) The invoice states the following:

> Invoice Date: March 10, 2009
> Balance Due: $300
> Services rendered: discussions and preparations for Westport Marine, Inc. case Discussions with Attorney Sherman Ward Hackbarth, Catherine Ann Conrad and Rodney Rigsby July-August 2009.
> *Payments — $300.*

(Id. (emphasis added).)

No income associated with Mr. Stoller's work on the *Conrad* case has been reported in the present case. Although Mr. Stoller's January 27, 2009 IFP Motion to the Court of Appeals in this case precedes the *Conrad* plaintiff's submission of the March 10, 2009 invoice reflecting a $300 payment, Mr. Stoller never amended his IFP Motion to show that payment, and indeed argued to the Court of Appeals as late as May 15, 2009 that his "*sole* source of income is his social security funds and food stamps." (Stoller's Resp. at 2 (emphasis added).) He supported that argument with a declaration attesting "that all statements made of his own knowledge are true," and with "the knowledge that willful false statements and the like so made are punishable by fine or imprisonment,

The court concluded that "Stoller's report repeatedly and aggressively violates Rule 26(a)(2) and these violations are neither harmless nor justified." (Oct. 1, 2009 Order at 3.)

or both, under Section 1001 of title 18 of the United States Code." *(Id.* at 7.)

Although a single $300 payment alone might not make a dramatic difference in Mr. Stoller's financial condition, if the statements to the court in the *Conrad* case are true, Mr. Stoller's repeated assertions in this matter that he is unemployed and that his sole income is social security are not true. Moreover, discovery regarding Mr. Stoller's 2008 publications and his "professional appointments" may demonstrate still other income unreported to the Court of Appeals.

2. Filings in the District of Arizona

Mr. Stoller's statement that his brother Christopher Stoller gave him $10,000 to pay the Court of Appeals fine in June 2008 is contrary to court filings made under oath by Christopher Stoller in his bankruptcy proceeding and by Leo and Christopher Stoller in a separate lawsuit filed in the District of Arizona.

Christopher Stoller filed for bankruptcy in the District of Arizona in December 2008. *In re Christopher Stoller*, 2:08-bk-18781-CGC (Bankr. AZ). Christopher Stoller's bankruptcy schedules, filed on January 20,

2009, do not mention a gift or loan to Leo Stoller within the preceding year; in the place for listing "all gifts or charitable contributions made within one year immediately preceding the commencement of this case except ordinary and usual gifts to family members aggregating less than $200 in value," Christopher Stoller marked "None." (C. Stoller Sched.) [Bankr. AZ No. 2:08-bk-18781-CGC, dkt 221[9] Likewise, there was no mention of a $10,000 gift in Christopher and Leo Stoller's joint motion to proceed *in forma pauperis* in *Christopher Stoller Pension & Profit Sharing*

[9] Mr. Stoller is identified in Christopher Stoller's bankruptcy schedules, however, as an unsecured creditor of an undescribed $500 claim. (C. Stoller Sched. at 15.)

Plan, Ltd. v. Countrywide Bank, Case No. 2:09-cv-00002 (D. AZ), filed just shortly after Mr. Stoller's IFP Motion in this case. [D. AZ No. 2:09-cv-00002, dkt 28.]

The omissions are particularly inexplicable in light of indications in Christopher Stoller's bankruptcy proceeding that Mr. Stoller had extensive conversations with Christopher Stoller and his counsel regarding Christopher Stoller's assets and liabilities prior to the completion of the schedules. [Bankr. AZ No. 2:08-bk-18781-CGC, dkt 20.]

On February 11, 2008, Mr. Stoller submitted a claim in his brother's bankruptcy proceeding, alleging an interest in his brother's car as well as the Greenway Crossing Shopping Center." (L. Stoller Claim.) [Bankr. AZ No. 2:08-bk-18781-CGC, Claims Register 4-1.] In a February 11, 2008 filing he stated, "Claimant, Leo Stoller asserts an interest in the Greenway Parkway Shopping center . . . ." (Obj. to Mot. for Relief from Auto. Stay at 2.) It also appears from documents in that case that Mr. Stoller may have had some connection with the collection of rent from tenants of that property as late as January 2009, the same month in which his IFP Motion in this case was filed.

[10] Christopher Stoller's bankruptcy attorney Dennis Wortman moved for and was ultimately granted leave to withdraw as his counsel, citing ethical concerns including the inability to rely on the veracity and completeness of Christopher Stoller's information and disagreement with his client concerning applicable law and methods to be used in pursuing various remedies. (Resp. to Obj. to Withdrawal Mot., Jan. 23, 2009 Order.) [Bankr. AZ. No. 2:08-bk-18781-CGC, dkt 20, 31.] Mr. Wortman's correspondence attached to the withdrawal motion suggests Leo Stoller's intimate involvement with his brother's bankruptcy proceeding. One letter refers to Mr. Wortman's 90 minute conference call with Mr. Stoller, Christopher Stoller and another person. *(Id.* at Ex. 1.) In reminding Christopher Stoller of the obligation to file his bankruptcy schedules, Mr. Wortman observed that the former client could complete them on his own and "probably with the aid of [Leo Stoller] who seems to write [Christopher Stoller's] script." *(Id.* at Ex. 2.)

[11] The shopping center was referred to in Christopher Stoller's bankruptcy proceeding both as the "Greenway Crossing Shopping Center" (Mot. for Relief from Auto. Stay at 3) [Bankr. AZ No. 2:08-bk-18781-CGC, dkt 39] and the "Greenway Parkway Shopping center" (Obj. to Mot. for Relief from Auto. Stay at 2) [Bankr. AZ No. 2:08-bk-18781-CGC, dkt 53]. For clarity, this report uses "Greenway Crossing Shopping Center."

(Mot. for Relief from Auto. Stay at Ex. 5.) Mr. Stoller's interest in the car or the shopping center, if any, was not disclosed in his IFP Motion, and Mr. Stoller has denied receiving any income from the Greenway Crossing Shopping Center and has asserted that his brother's car has been repossessed. (Stoller' s Resp. at 5.) [7th Cir. 08-4240, dkt 24.][12] However, Christopher Stoller reported $1,475.00 in monthly "rental income" on his bankruptcy schedule and Statement of Financial Affairs signed under oath on January 19, 2009. (C. Stoller Sched.) [Bankr. AZ No. 2:08-bk-18781-CGC, dkt 22.]

3Mr. Stoller's Other Litigation

On November 6, 2008, just three months before his IFP Motion in this matter, Mr. Stoller filed a motion for leave to appeal *in forma pauperis* in another matter before the U.S. District Court for the Northern District of Illinois, *Central Mfg. Co. v. Pure Fishing, Inc.* [N.D. Ill. No. 05-cv-725, dkt 321.] In that motion, Mr. Stoller declared that he was unemployed and that his "sole source" of monthly income was his social security payments of $561. *(Id.)* The motion was denied, like three earlier motions in that case, for

failure to submit the required financial affidavit. (Nov. 7, 2008 Order.) [N.D. Ill. No. 05-cv-725, dkt 323.] Indeed, the denial order warned that sanctions would be imposed if Mr. Stoller submitted another IFP motion in the case. *(Id.)* Mr. Stoller apparently did try subsequently to file a similar motion, although this time with a financial affidavit, and directly to the Court of Appeals, but it was referred back to the District Court. (Dec. 12, 2008 Order.) [7th Cir. No. 08-3915, dkt 4-2.] In his affidavit, Mr. Stoller did not refer to his interest in the shopping center or any expert witness employment. (Dec. 12, 2008 IFP Mot., Group Ex. at 1-4.) [7th Cir. No. 08-3915, dkt 4-1.] The District Court again denied the motion, refining its earlier warning to state that any additional IFP motions directed to the court, either directly or through a referral from the Court of Appeals, would result in the imposition of sanctions against Mr. Stoller. (Feb. 20, 2009 Order.) [N.D. Ill. No. 05-cv-725, dkt 333.][13]

Pure Fishing lists dozens of lawsuits and appeals in this circuit and others which Mr. Stoller filed, intervened in, or pursued during the past three years, as evidence that Mr. Stoller has access to resources that he has not disclosed to the Court of Appeals. (Pure Fishing's Stmt. at 9-12 (recreated and attached hereto as App. 1).) Common sense suggests that the cost of preparing, copying and filing the papers involved in each of those lawsuits is inconsistent with Mr. Stoller's sworn statement that his sole income of $589 in

social security benefits is completely consumed by his expenses for rent and food.

B.Pure Fishing's Additional Allegations

1. The Purported Signature of Mr. Stoller's Daughter Julia Bishop

Pure Fishing argues that the declaration of Julia Bishop that Mr. Stoller submitted to the Court of Appeals (stating that she loaned her father $450 for the filing fee) does not appear to contain Ms. Bishop's true and accurate signature when it is compared to other documents Pure Fishing has obtained. (Pure Fishing's Stmt. at 7-8.) For comparison Pure Fishing submits copies of: (1) two

[13] Interestingly, in his IFP Motion in the present case, just a month later, Mr. Stoller attested to a $589 monthly social security payment (perhaps due to an increase in benefits), but continued to itemize his monthly expenses as $561 (although he mistakenly totaled those expenses to equal $589.) (IFP Mot., Group Ex. at 2-6.)

notarized documents also purporting to contain Ms. Bishop's signature; (2) tax returns and a notarized court filing purporting to contain Mr. Stoller's signature; and (3) a bankruptcy filing purporting to contain Christopher Stoller's signature. *(Id.* at 7.) Although those materials are subject to further authentication, it certainly appears that the signature submitted as "Julia Bishop" on the declaration is nothing at all like other versions of her signature but bears a striking similarity to Mr. Stoller's own signature.

2 Other Circumstances

Pure Fishing also points to a number of other questionable circumstances pertaining to Mr. Stoller's finances. Pure Fishing points to specific documents filed in at least seven different lawsuits, and it has identified dozens of others involving Mr. Stoller. For example, Pure Fishing would like to investigate whether and with what funds Mr. Stoller pays for use of an office that is leased in the name of "Julia Bishop d/b/a ACE," and whether and with what funds he pays a secretary there and one-third of the building's utilities; the relationship between Mr. Stoller and the

Christopher Stoller Pension and Profit Sharing Plan, an entity identified at Mr. Stoller's address and listed in a pending trademark application as the user of a mark in connection with the sale of goods since 1985; the relationship between Mr. Stoller and Willow Industries, Inc., a Delaware corporation with the same mailing address as Mr. Stoller; the expenses and source of funds used to pay the expenses associated with a postal delivery box Mr. Stoller maintains in Oak Park, Illinois; the financial circumstances surrounding Mr. Stoller's claim in Christopher Stoller's bankruptcy proceeding that he has an interest in the Greenway Crossing Shopping Center; and any payment Mr. Stoller received as guardian of Ray Weber. (*Id.* at 12-14.) Further, Pure Fishing would like to obtain documents pertaining to the National Association of Traveling Nurses and the Association for the Enforcement of Intellectual Property Rights.

C. Mr. Stoller's Submission

Mr. Stoller has not responded substantively to any of the matters described above. Rather, his submission proposes that the evidentiary hearing in this matter should be focused solely on getting "an accurate assessment of [Mr. Stoller's] financial condition at the time of his filing" and suggests that the submission of documentation concerning his income and expenses during the time of his IFP Motion and the 90 days preceding it, and the source of funds used to pay both the Court of Appeals' filing fee and its earlier sanction fee will be sufficient for this purpose. (Stoller's Subm. at 2-3.) He suggests that any discovery and evidence be limited to 90 days preceding the submission of his IFP Motion. *(Id.* at 2.) Pure Fishing, on the other hand, suggests that the relevant scope of inquiry should be from August 2007, when Mr. Stoller filed his notice initiating this appeal, through January 2009, when Mr. Stoller filed his IFP Motion. (Pure Fishing's Stmt. at 4.) Neither suggestion accurately reflects the scope of the referral. Mr. Stoller's IFP Motion attested to his financial condition for the preceding 12 months, that is, from January 2008. He continued to make statements about his finances to the Court of Appeals thereafter and to this court in seeking appointment of counsel. The period from January 2008 to the present is relevant to the referral.

REQUEST FOR INSTRUCTIONS

As the foregoing demonstrates, investigating the truth of Mr. Stoller's submissions to the Court of Appeals is potentially a substantial undertaking. Mr. Stoller is being ordered to produce documents and provide certain information aimed at answering basic questions presented by the material already submitted, for example, the location of Julia Bishop. But much more could be explored. Pure Fishing suggests the following:

1. To obtain further evidence about Christopher Stoller's alleged gift of $10,000 to Mr. Stoller, Pure Fishing proposes issuing document subpoenas to several third parties, including Christopher Stoller and any bank or financial institution identified as having been involved in a transfer of money between Christopher and Leo Stoller, and questioning Christopher Stoller and his former bankruptcy attorney Dennis J. Wortman, presumably by deposition or trial subpoena:[4] (Pure Fishing's Stmt. at 56.) It appears that Mr. Wortman resides in Arizona. It is not clear where Christopher Stoller resides although there is a suggestion in his bankruptcy court filings that at least as of February 2009 he was incarcerated in Maricopa County, Arizona. (Feb. 12, 2009 Minute Entry.) [Bankr. AZ No. 2:08-bk-18781-CGC, dkt 56.] The banks or financial institutions involved might also be outside the scope of a subpoena

from this court.

2. To explore the authenticity of Julia Bishop's signature Pure Fishing suggests: serving interrogatories and/or requests for admissions to Mr. Stoller, Ms. Bishop and

[14] Pure Fishing also proposes issuing interrogatories to Christopher Stoller, but that vehicle would not be appropriate since he is not a party to this action.

> Christopher Stoller; seeking documents from any bank or financial institution that is identified as having been involved with the loan transaction; questioning Ms. Bishop, presumably by deposition or at a hearing; and retaining a handwriting expert to analyze the exemplars it has obtained and to render an opinion as to the author of the disputed signature.[15] (Pure Fishing's Stmt. at 8-9.)

3 To follow up on other potential sources of income to Mr. Stoller suggested by his various court filings, Pure Fishing also suggests document subpoenas to a number of third parties, including the Oak Park office building owner, the Oak Park postal facility manager, identified banks or financial institutions, the Christopher Stoller Pension and Profit Sharing Plan, Willow Industries, Inc., The National Association of Traveling Nurses, and the Association for the Enforcement of Intellectual Property Rights. *(Id.* at 15-17.)

Before this court takes action beyond obtaining information and documents from Mr. Stoller, especially discovery designed to obtain information from persons outside of the jurisdiction or from retained experts, and before the court or any other party assumes the costs associated with that process, this court respectfully

requests further guidance from the Court of Appeals. If the Court directs that discovery is to reach beyond this district, this court respectfully requests guidance as to whether it is authorized as special master to initiate proceeding in other jurisdictions for the purpose of issuing subpoenas, or whether a private party such as Pure Fishing is authorized to do so in

[15] Here too, Pure Fishing's suggestion that it could issue interrogatories or requests for admission to Ms. Bishop and Christopher Stoller is inappropriate since they are not parties to this action.

support of this referral. Likewise, guidance is requested as to what resources are available to the special master to defray the associated costs, such as witness and court reporter fees.

Respectfully
Submitted,

Geraldine Soat Brown

GERALDINE SOAT BROWN
United States Magistrate Judge

United States District Court,

Northern District of Illinois

CASE NO. 1:07-cv-05118

DATE: 12/2/08

JOHN W. DARRAH, Judge Presiding

DOCKET ENTRY TEXT:

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Tuesday, December 2, 2008:

MINUTE entry before the Honorable John W. Darrah:Per the Executive Committee order in case #07 C 1435, Leo Stoller is prohibited from filing any new

civil action in this Court, without first obtaining leave, therefore this case is closed. The Court vacates its order of 11/20/08. Civil case terminated. Status hearing set for 12/9/08 is vacated. Mailed notice(maf,)

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by CM/ECF, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

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No. 10 C 2028

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LEO STOLLER,

Plaintiff,

v.

BANK OF NEW YORK MELLON TRUST CO., et. al.

MEMORANDUM OPINION AND ORDER

JAMES F. HOLDERMAN, Chief Judge:

APPENDIX A-28

On March 2, 2010, *pro se* plaintiff Leo Stoller ("Stoller") filed a seven-count Complaint in the Circuit Court of Cook County, Illinois, Case No. 2010 L 002687. (Dkt. No. 3-1 ("Complaint").) Defendants Bank of America Corporation, Bank of New York Mellon Trust Co., Bryan Cave LLP, Countrywide Financial Corporation, and ReconTrust Company, N.A. (the "Removing Defendants") thereafter filed a Notice of Removal with this court on April 1, 2010. (Dkt. No. 3.)

Prior to these events, the U.S. Court of Appeals for the Seventh Circuit on December 4, 2009, ordered "the clerks of all federal courts in this circuit . . . to return unfiled any papers submitted either directly or indirectly by [Stoller] or on [Stoller's] behalf." (Case No. 08-4240, Dkt. No. 35 at 2 (7th Cir. Dec. 4, 2009) (the "Order").) The Seventh Circuit's December 4, 2009

Order is to remain in effect for at least two years, at which point Stoller is authorized to seek modification or rescission of the Order. *(Id.)* In practice, this means that Stoller cannot prosecute claims in any federal court in the Seventh Circuit. Accordingly, for the reasons set forth below, the court dismisses Stoller's federal claims under the Truth In Lending Act, 15 U.S.C. §§ 1601, *et seq.* and the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961, *et seq.*, and remands Stoller's remaining state law causes of action. The Removing Defendants' "Motion to Dismiss Plaintiff's Complaint" (Dkt. No. 5) is denied as moot.

BACKGROUND

In relevant part, Stoller's Complaint describes his interest in several Arizona properties, at least one of which has been the subject of a foreclosure sale. (Dkt. No. 3-1 ¶¶

22-24, 36-51.) Stoller filed his Complaint against defendants Bank of New York Mellon Trust Co., Robert P. Kelley, Gerald L. Hassell, Thomas P. Gibbons, Carl Krasik, Bank of America, Walter E. Massey, Joe L. Price, Brian T. Moynihan, Bryan Cave LLP, Steven R. Smith, Michael Werich, John Does 1-10, Countrywide Financial, and Reconstruct [sic] Company, N.A. (collectively "Defendants"), alleging that the Defendants have admitted to their participation in "the current mortgage crisis" and that "now these same defendants in a continuation of their on going [sic] scheme to defraud property owners have failed and/or refused to notify the Plaintiff that a property which was the subject of pending litigation as between the parties was being unlawfully foreclosed/auctioned off to 'another' bank." *(Id.* ¶ 51(f).) Stoller's Complaint includes claims against all Defendants for "failure to comply with applicable [federal and state] law" (Count One), deceptive

trade practices (Count Two), "racketeering - civil RICO" (Count Three), conspiracy (Count Five), fraud (Count Six), and intentional infliction of emotional distress (Count Seven), as well as claims against defendants Bryan Cave, LLP, Steven R. Smith, and Michael Wernch for "aiding and abetting a client in the commission of a tort" (Count Four).

As noted above, the Removing Defendants removed Stoller's Complaint to the Northern District of Illinois by filing a Notice of Removal with this court on April 1, 2010. The Removing Defendants contend that this court has jurisdiction over Stoller's Complaint under 28 U.S.C. §§ 1331 and 1367, because Stoller has alleged violations of the Truth In Lending Act ("TILA"), 15 U.S.C. §§ 1601, *et seq.* and the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1961, *et seq.*, and because these claims share a common core of operative facts with Stoller's state law claims. (Dkt. No. 3 ¶¶ 5-6.) The Removing Defendants have also filed a "Motion to Dismiss Plaintiff's Complaint." (Dkt. No. 5.)

On April 15, 2010, the Removing Defendants appeared before this court to present their motion to dismiss. Stoller likewise appeared before the court on April 15, 2010, and tendered to the court his "Objection to Notice of

Removal and Response to [the Removing Defendants'] Motion to Dismiss Plaintiff's Complaint," along with accompanying exhibits. The Removing Defendants filed a response to Stoller's objections on April 29, 2010 (Dkt. No. 9) and, on April 22, 2010, the court received a hard copy of Stoller's reply submitted to chambers staff.

ANALYSIS

As described above, the U.S. Court of Appeals for the Seventh Circuit has ordered "[t]he clerks of all federal courts in this circuit . . . to return unfiled any papers submitted either directly or indirectly by [Stoller] or on [Stoller's] behalf." (Dec. 4, 2009 Order at 2.) This type of order is commonly referred to as a "*Mack* bar," in reference to *Support Sys. Intl, Inc. v. Mack*, 45 F.3d 185, 186 (7th Cir. 1995). Stoller is authorized to seek modification or rescission of the Seventh Circuit's Order no earlier than December 4,

2011. (Dec. 4, 2009 Order at 2.)

The Removing Defendants suggest that the Seventh Circuit's Order should be interpreted to mean only that Stoller cannot initiate federal court proceedings. (Dkt. No. 9 ¶ 3.) This court disagrees. First, the Removing Defendants' reading does not comply with the actual language used by the Seventh Circuit in its December 4, 2009 Order, which states unequivocally that "any papers" submitted by Stoller are to be "return[ed] unified." (Dec. 4, 2009 Order at 2.) Moreover, the Seventh Circuit has previously rejected the interpretation of *Mack* bars proffered by the Removing Defendants. In *In re City of Chicago*, the Executive Committee of the Northern District of Illinois permitted a litigant who was subject to a

Mack bar to continue conducting litigation that was already on file at the time the Seventh Circuit issued its order. *In re City of Chicago*, 500 F.3d 582, 584 (7th Cir. 2007). After the Seventh Circuit emphasized that its order applied "to *all* cases now pending or that [the litigant] seeks to file in the future," the Executive Committee indicated that it planned to issue a stay on the cases pending in the district court until the *Mack* bar was lifted. *Id.* at 584-85 (emphasis added). The Seventh Circuit rejected the Executive Committee's approach and stated that the pending lawsuits "must be dismissed for want of prosecution" as long as the *Mack* bar remained in effect. *Id.* at 585.

Because the removal in this case was proper on the basis of federal question jurisdiction, Stoller's federal and state claims are currently pending before this court—despite

the fact that Stoller has been barred from initiating any new lawsuits in the Northern District of Illinois. However, in light of the precedent set forth in *In re City of Chicago*, it is also clear that this court cannot permit Stoller to litigate his claims in this court. One solution would be to remand all of Stoller's claims to the state court. *See Support Sys. Int'l*, 45 F.3d at 187 ("most federal claims can be litigated in state court"). However, a blanket remand order of this type would ignore the Removing Defendants' right "to have federal claims litigated in federal court." (Dkt. No. 9 at 1, 3; *see also* 28 U.S.C. § 1441(b).)

The court finds that dismissal of Stoller's federal claims is an appropriate solution to this impasse. When Stoller attempted to deceive the Seventh Circuit by falsely claiming to be indigent (Dec. 4, 2009 Order at 2), he abused the federal litigation process and forfeited his right to access this process for purposes of litigating any meritorious federal claims he may have. It is clear that this forfeiture already includes all federal claims initiated by Stoller in federal court.In the interest of justice, this court finds that the Seventh Circuit's December 4, 2009 Order also encompasses federal claims removed to this court by state court defendants.

Finally, the court notes that a judicial resolution of Stoller's pending federal claims is not necessary "to protect him from imprisonment or other confinement." *Support Sys. Intl*, 45 F.3d at 186.

CONCLUSION

For the reasons set forth above, the court dismisses Stoller's federal claims under the Truth In Lending Act, 15 U.S.C. §§ 1601, *et seq.* and the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961, *et seq.*, and remands Stoller's remaining state law causes of action. The Removing Defendants' "Motion to Dismiss Plaintiff's Complaint" (Dkt. No. 5) is denied as moot.

ENTER:

Holderman

JAMES F. HOLDERMAN
Chief Judge, United States District Court

Date: April 26, 2010